

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
)	
V.)	NO. 04-10274-PBS
)	
TONY DIAZ)	
_____)	

DEFENDANT'S PROPOSED JURY INSTRUCTIONS

The defendant respectfully submits the attached jury instructions for the Court's consideration and requests that the jury be instructed accordingly.

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Respectfully submitted,
Tony Diaz
By His Attorneys

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/s/Andrew D'Angelo
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Date: October 18, 2005

DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO TESTIFY

Tony Diaz has a constitutional right not to testify and no inference of guilt, or anything else, may be drawn from the fact that Mr. Diaz did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

First Circuit Pattern Jury Instructions (1998)

**PRESUMPTION OF INNOCENCE; PROOF
BEYOND A REASONABLE DOUBT**

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, Tony Diaz, has the benefit of that presumption throughout the trial, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to Mr. Diaz. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to Mr. Sutherland's guilt of a particular crime, it is your duty to acquit him of that crime. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Diaz's guilt of a particular crime, you should vote to convict him.

First Circuit Pattern Jury Instructions (1998)